

**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**COLFAX TREATING COMPANY, L.L.C.
RAPIDES PARISH
ALT ID NO. LAD 008184616**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL ACT,
La. R.S. 30:2001, ET SEQ.**

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ENFORCEMENT TRACKING NO.

HE-CN-01-0613

AGENCY INTEREST NO.

1399

and

IN THE MATTER OF

**ROY O. MARTIN LUMBER COMPANY, L.P.
RAPIDES PARISH
ALT ID NO. LAD 069 524 981**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

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ENFORCEMENT TRACKING NO.

MM-CN-02-0090

AGENCY INTEREST NO.

97707

SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between Colfax Treating Company, L.L.C. (“Colfax”), Roy O. Martin Lumber Company, L.P. (“Roy O. Martin”) (sometimes collectively “the Respondents”) and the Louisiana Department of Environmental Quality, (“the Department”), under authority granted by the Louisiana Environmental Quality Act, LSA-R.S. 30:2001, *et seq.*, (the “Act”).

The Roy O. Martin CONOPP

I.

Roy O. Martin owns a facility located in Alexandria, Rapides Parish, Louisiana.

II.

On November 21, 2002, the Department issued a Compliance Order and Notice of Potential Penalty (“CONOPP”) to Roy O. Martin purporting to make certain findings of fact, ordering that the facility take certain listed actions within specified time frames and indicating that a penalty was being considered by the Department.

III.

In the CONOPP, the Department alleged:

IV.

The Respondent is required by Permit Condition VI.I.1 to annually analyze samples from all monitoring wells at the compliance point for all constituents listed in LAC 33:V.3325.Table 4 to determine whether additional hazardous constituents are present in the monitoring aquifer(s). If the Respondent finds LAC 33:V.3325.Table 4 constituents that are not already identified in the permit as monitoring constituents, the Respondent may confirm the presence of these new constituents by re-sampling within one (1) month of the initial analysis, repeating the Table 4 analysis, reporting the concentrations of these additional constituents to the Department within seven (7) calendar days, after completion of the second analysis and confirmation of their presence, and adding them to the quarterly monitoring list. The Respondent can choose not to resample within the one (1) month period; however, if the Respondent chooses not to resample, then the concentrations of the constituents must be reported to the Department within seven (7) calendar days after completion of the initial analysis, and the new constituents must be added to the Respondent’s quarterly monitoring list.

V.

On February 13, 2002, the Respondent submitted the 2001 Annual Groundwater Monitoring Report which states that twenty-six (26) new parameters from LAC 33:V.3325.Table 4 were found to be present in the point of compliance wells. Fifteen (15) of the twenty-six (26) constituents exceed the background levels and the alternate concentration limits established by the administrative authority.

“Based on information detailed in Findings of Fact V above, the Environmental Technology Division further reviewed the 2001 Annual Groundwater Monitoring Report and identified the following violations:

A. The Respondent chose not to resample within one (1) month and failed to report the concentrations of the additional constituents found to the administrative authority within seven (7) calendar days after completion of the initial analysis, in violation of LAC 33:V.309.A, LAC 33:V.3319.G, and Permit Condition VI.I.1 of the Final Hazardous Waste Post Closure Permit.

B. The Respondent failed to add the additional constituents found to the quarterly monitoring list, in violation of LAC 33:V.309.A, LAC 33:V.3319.G, and Permit Condition VI.I.1 of the Final Hazardous Waste Post Closure Permit.

IV.

In the CONOPP, the Department further advised that it has recently conducted a review of groundwater invoice and accounts receivable records for the facility kept in the Office of Environmental Assessment, Fiscal Services Division. The CONOPP states that the Department determined that Roy O. Martin failed to pay in full its actual fees for the years 1989, 1990, 1991, 1992, 2001 and 2002. The Department asserted that Roy O. Martin has a past due balance on its account in the amount of \$71,125.00. The CONOPP specifically provides:

V.

“Subsequent to the review of the 2001 Annual Groundwater Monitoring Report by the Environmental Technology Division, a review of the groundwater invoice and accounts receivable records for the facility kept in the Office of Environmental Assessment, Fiscal Services Division was performed. These records indicated the following:

The Respondent failed to pay in full annual groundwater fees for the years 1989, 1990, 1991, 1992, 2001, and 2002 and has a past due balance on its account with the Department for the amount of \$71,125.00, in violation of LAC 33:I.1415.”

V.

After having an opportunity to review the CONOPP, including the Findings of Fact, the Compliance Order, and the Notice of Potential Penalty sections of the document, Roy O. Martin requested an adjudicatory hearing on the entirety of the CONOPP. Roy O. Martin contested its liability for both the alleged violations and the alleged unpaid fees.

The Colfax Compliance Order

VI.

Colfax operates a facility at 74 Wadley Road in Pineville, Rapides Parish, Louisiana. The site bears the EPA identification number LAD 008184616.

VII.

On May 6, 2002, the LDEQ issued a Compliance Order HE-C-01-0613 to Colfax purporting to make certain findings of fact, ordering that the facility take certain listed actions within specified time frames and reserving the right to seek civil penalties. In further particular, the Compliance Order asserted the following:

An inspection conducted by the Department on or about November 20, 2001 disclosed that the Respondent failed to maintain the drip pad in proper working order. Specifically the drip pad was not maintained free of cracks and chips as required by LAC 33:V.2805.D, in violation of LAC 33:V.1109.E.1.a.iii.

VIII.

By letter issued on or about November 18, 2002, the Department informed Colfax that the issue identified in Finding of Fact II had been adequately addressed. The Department, however, reserved the right to seek civil penalties for the violation alleged.

IX.

After having an opportunity to review the Compliance Order, including both the Findings of Fact and the Compliance Order sections of the document, Colfax requested an adjudicatory hearing on the entirety of the Compliance Order.

The December 2002 Inspections

X.

On or about December 27 and 30, 2002, in response to a citizen's complaint, the Department conducted inspections of Colfax Treating Company's facility for the unauthorized disposal of creosote-treated woodwaste. Further investigation revealed that a contractor had mistakenly placed three to four pieces of creosote treated pole in a hole. These pole pieces were removed and a "TCLP" analysis was conducted that revealed the pole pieces were non-hazardous. Respondent properly disposed of the pieces by transporting them to a permitted solid waste landfill. Colfax at all times denied that it had committed any violation of any permit or regulation.

Agreement to Compromise

XI.

Colfax and Roy O. Martin specifically requested that the adjudicatory hearings address any and all penalty issues, including specifically, but not limited to, the considerations supporting any penalty calculation. Following the filing of the hearing requests, the Department, Colfax and Roy O. Martin entered into settlement discussions addressing the Compliance Order, the CONOPP and the December 2002 Inspections.

XII.

Colfax and Roy O. Martin deny that they committed the violations as alleged, or are liable for any fee, fine, forfeiture or penalty.

XIII.

Nonetheless, the Respondents, without making any admission of liability under state or federal statute or regulation, agree to pay, and the Department agrees to accept, the sum of Twenty-Two Thousand and 00/100 (\$22,000.00) Dollars (the “settlement amount”), of which Two Thousand Four Hundred Eighty and 00/100 (\$2,480.00) represents enforcement costs, in full and complete settlement of any and all claims of liability for any fee, fine or penalty or non-compliance relating to the facts and circumstances at issue in the above-referenced matters, under state or federal law, as set forth in this Agreement. After an examination of the “nine factors” pursuant to Louisiana Revised Statutes 30:2025(E)(3), the Department has determined that the settlement payment should be accepted as a full and complete settlement of the claims set forth herein.

XIV.

Respondents will make payment of the settlement amount by check made due and payable to the Department within thirty (30) days from receipt of a copy of this Settlement Agreement bearing the Secretary’s signature, or the signature of someone authorized to sign on the Secretary’s behalf. If payment is not received within that time, this Agreement is voidable at the option of the Department. Settlement funds are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XV.

Respondents will further agree to make future payments of all due and owing hazardous waste assessment oversight fees on a timely basis.

XVI.

Respondents agree that the Department may consider the inspection report(s), the CONOPP, and the Compliance Order for the purposes of determining compliance history in connection with any future enforcement or permitting action by the Department and in any such action that Respondent shall be estopped from objecting to the documents referred to hereinabove from being considered by the Department for the sole purpose of determining Respondent's compliance history.

XVII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative review of the terms of this agreement. Respondent retains the right to judicial review of whether or not Respondent has complied with the agreement, and in connection with such review, Respondent shall retain the right to judicial review of the terms of this agreement.

XVIII.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

XIX.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XX.

The Respondents have caused a public notice advertisement to be placed in the official journal of the Parish Governing Authority in Rapides Parish, as well as a newspaper of general circulation in Rapides Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondents have submitted a proof of publication affidavit to the Department and, as of the date of this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since the publication of the notice.

XXI.

Any person's signature below shall constitute an agreement by that person, or as agent for a principal, to be bound by the terms and conditions of this Agreement. Each signatory to this Agreement represents that he is authorized to bind the party he represents. This Agreement shall apply to and be binding upon the Respondents and the Department, their principals, agents, successors and assigns and upon all persons, contractors, and consultants acting under or for either Respondents or the Department.

XXII.

This Agreement is effective upon the last date signed by either party to the Agreement. The last signatory shall promptly mail a signed copy to the other party after executing the Agreement.

WITNESSES:

Debra McGarry
Robin F. Zwart

RESPONDENT Roy O. Martin Lumber
Company, L.P.

BY: Eric Jarrell

NAME: Eric Jarrell

TITLE: counsel for Respondent

THUS DONE AND SIGNED before me this 8th day of December, 2003, at
New Orleans, LA.

[Signature]

Notary Public

WITNESSES:

Debra McGarry
Robin F. Zwart

RESPONDENT Colfax Treating Company,
L.L.C.

BY: Eric Jarrell

NAME: Eric Jarrell

TITLE: counsel for Respondent

THUS DONE AND SIGNED before me this 8th day of December, 2003, at
New Orleans, LA.

[Signature]

Notary Public

WITNESSES:

Ray M. Hatch
Holly Smith

STATE OF LOUISIANA
L. Hall Bohlinger, Secretary
Department of Environmental Quality

By: R. Bruce Hammatt
R. Bruce Hammatt
Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED before me this 29 day of April, 2003, at
Baton Rouge La.

Christopher A. Patchoff
Notary Public

Approved: R. Bruce Hammatt
Bruce Hammatt, Assistant Secretary
Office of Environmental Compliance



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

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APR 21 2004
LA. DEPT. OF ENV. QUALITY
LEGAL AFFAIRS DIVISION

April 19, 2004

Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
Colfax Treating Company, L.L.C. and Roy Martin Lumber Co., L.P.
HE-CN-01-0613 & MM-CN-02-0090

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


NICHOLAS GACHASSIN
First Assistant Attorney General

NG/cbw